

Internal Revenue Service, Treasury

§ 301.7609-2

be made in connection with determining its liability, if any, for unrelated business income tax.

(4) *Effective date.* The provisions of this paragraph shall apply to audits and examinations of taxable years beginning after December 31, 1969.

(j) *Effective date.* Paragraphs (a) through (g) of this section, inclusive, are effective for examinations scheduled after April 2, 1993.

(Secs. 1441(c)(4) (80 Stat. 1553; 26 U.S.C. 1441(c)(4)), 3401(a)(6) (80 Stat. 1554; 26 U.S.C. 3401(a)(6)), and 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7146, 36 FR 20599, Oct. 27, 1971; T.D. 7977, 49 FR 36836, Sept. 20, 1984; T.D. 8297, 55 FR 12346, Apr. 3, 1990; T.D. 8469, 58 FR 17519, Apr. 5, 1993]

§ 301.7606-1 Entry of premises for examination of taxable objects.

Any officer or employee of the Internal Revenue Service may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose.

[T.D. 7297, 38 FR 34804, Dec. 19, 1973]

§ 301.7609-1 Special procedures for third-party summonses.

(a) *In general*—(1) Section 7609 requires the Internal Revenue Service (IRS) to follow special procedures when summoning a third party's testimony, records, or computer software source code. Except as provided in § 301.7609-2(b), the IRS must provide notice of a third-party summons to any person identified in the summons, other than the person summoned. A person entitled to notice of a third-party summons may intervene in any proceeding brought to enforce the summons or may bring a proceeding to quash the summons, regardless of whether they receive notice of the summons from the IRS pursuant to section 7609(a) and § 301.7609-2.

(2) Neither section 7609 nor the regulations hereunder limit the IRS's ability to obtain information, other than

by summons, through formal or informal procedures authorized by sections 7601 and 7602.

(b) *Cross references.* See § 301.7609-2 for rules relating to persons who must be notified of a third-party summons and exceptions to the notification requirements. See § 301.7609-3 for rules relating to the rights and duties of summoned parties. See § 301.7609-4 for rules relating to actions to quash a summons or to intervene in a summons enforcement proceeding. See § 301.7609-5 for rules relating to the suspension of periods of limitations.

(c) *Records.* For purposes of §§ 301.7609-1 through 301.7609-5, the term *records* includes books, papers, or other data.

(d) *Effective/applicability date.* This section is applicable on April 30, 2008.

[T.D. 9395, 73 FR 23345, Apr. 30, 2008]

§ 301.7609-2 Notification of persons identified in third-party summonses.

(a) *In general*—(1) *Persons entitled to notice.* Except as provided in § 301.7609-2(b), the Internal Revenue Service (IRS) shall give notice of a third-party summons to any person, other than the person summoned, who is identified in the summons. The only persons so identified are the person with respect to whose liability the summons is issued and any other person identified in the description of summoned records or testimony. For example, if the IRS issues a summons to a bank with respect to the liability of C that requires the production of account records of A and B, both of whom are named in the summons, the IRS must notify A, B and C of the summons.

(2) *Time for providing notice.* If notice is required by this paragraph, such notice must be given within three days of the date on which the summons is served on the third party, but no later than 23 days prior to the date fixed in the summons as the date on which the examination of the summoned person or records is scheduled.

(3) *Methods for serving notice.* Notice may be served by hand delivery to any person entitled to notice or by leaving notice at such person's last and usual place of abode. Notice also may be served by certified or registered mail

to the person's last known address, as defined in § 301.6212-2. If service to a person entitled to notice is made by certified or registered mail, the date of service is the date on which the notice is mailed.

(4) *Content of the notice.* Notice required to be given to any person entitled to notice must be accompanied by a copy of the summons that has been served and must include an explanation of the right to bring a proceeding to quash the summons. The copy of the summons accompanying the notice is not required to contain the attestation that appears pursuant to section 7603 on the copy of the summons served on the summoned person.

(b) *Exceptions.* The IRS is not required to provide notice to persons identified in the following third-party summonses:

(1) *Summons served on the taxpayer.* The IRS is not required to provide notice of a summons served on the person with respect to whose liability the summons was issued, or any officer or employee of such person.

(2) *Existence of records.* The IRS is not required to provide notice in the case of a summons issued to determine whether or not records of the business transactions or affairs of a person identified in the summons have been made or kept.

(3) *Numbered account or similar arrangement.* The IRS is not required to provide notice in the case of a summons issued solely to determine the identity of a person having a numbered account or similar arrangement with a bank or other institution. An account is a numbered account or similar arrangement within the meaning of this paragraph if it is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other device not involving the disclosure of the person's identity. The term *person having a numbered account or similar arrangement* includes the person who opened the account and any person authorized to access the account or to receive records or statements concerning it.

(4) *Summonses in aid of the collection of liabilities—(i) In general.* The IRS is not required to provide notice in the case

of a summons issued in aid of the collection of liabilities. A summons is in aid of the collection of liabilities within the meaning of this paragraph if it is issued in connection with the collection of—

(A) An assessment or judgment against the person with respect to whose liability the summons is issued; or

(B) The liability determined at law or in equity of any transferee or fiduciary of a person described in paragraph (b)(4)(i)(A) of this section.

(ii) *Examples.* The rules of paragraph (b)(4) of this section are illustrated by the following examples:

Example 1. A third-party summons is issued to a bank to determine the amount held in an account in the name of A, against whom unpaid income taxes have been assessed. Notice of the summons is not required to be given to A or any other persons identified in the summons because the summons is issued in connection with the collection of taxes that have been assessed.

Example 2. A third-party summons is issued to determine whether assessments should be made against A, who is potentially liable for a trust fund recovery penalty under section 6672 with respect to the assessed but unpaid withholding tax liability of employer E. The summons is captioned: In the matter of A. Notice of the summons must be provided to A and to any other persons identified in the summons because the summons was issued with respect to A's potential, unassessed liability under section 6672.

(5) *Summonses issued by a criminal investigator.* The IRS is not required to provide notice in the case of a summons issued by a criminal investigator to a person other than a third-party recordkeeper, as defined in section 7603(b). For purposes of section 7609(c)(2)(E), a summons issued by a criminal investigator is any summons issued as part of a criminal investigation by an IRS officer or employee having authority to conduct a criminal investigation and to issue a summons.

(6) *John Doe summonses.* The IRS is not required to provide notice in the case of a John Doe summons issued under section 7609(f).

(7) *Summonses issued pursuant to a court order to prevent spoliation of evidence.* The IRS is not required to provide notice in the case of a summons for which a court determines there is reasonable cause to believe the giving of notice

may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(c) *Effective/applicability date.* This section is applicable on April 30, 2008.

[T.D. 9395, 73 FR 23345, Apr. 30, 2008]

§ 301.7609-3 Duty of and protection for the summoned party.

(a) *Duty of the summoned party.* Upon receipt of a summons, the summoned party must begin to assemble the summoned records. The summoned party must be prepared to produce the summoned records on the date on which the summons states that they are to be examined, regardless of the institution or anticipated institution of a proceeding to quash or the summoned party's intervention in a proceeding to quash, as allowed under section 7609(b)(2)(C).

(b) *Disclosing summoned party not liable—(1) In general.* A summoned party, or an agent or employee thereof, who makes a disclosure of records or gives testimony as required by a summons in good faith reliance on the certificate of the Secretary (as defined in paragraph (b)(2) of this section) or an order of a court requiring production of records or giving of testimony, will not be liable for any claim arising from such disclosure brought by any customer, any party with respect to whose tax liability the summons was issued, or any other person.

(2) *Certificate of the Secretary.* The Secretary may issue to the summoned party a certificate if the person with respect to whose liability the summons was issued expressly consents to the examination of the records summoned and the taking of testimony. The Secretary also may issue to the summoned party a certificate stating that—

(i) The 20-day period within which a person entitled to notice of the summons may institute a proceeding to quash the summons has expired; and

(ii) No proceeding has been instituted within that period.

(c) *Reimbursement of costs.* Summoned third parties may be entitled to reimbursement of their costs of assembling

and preparing to produce summoned records, to the extent allowed by section 7610 and § 301.7610-1.

(d) *Notification of suspension of periods of limitations in connection with a John Doe summons—(1) Requirement of notification.* If any periods of limitations are suspended under section 7609(e)(2) and § 301.7609-5(d) with respect to a John Doe summons described in section 7609(f), the summoned party is required under section 7609(i)(4) to provide notice of such suspension to all persons with respect to whose liability the summons was issued.

(2) *Content of notification.* A summoned party required to notify a person of the suspension of the periods of limitations shall provide the following information to such person—

(i) A John Doe summons was served on the summoned party seeking records that may be relevant to the person's tax liability;

(ii) The date on which the summons was served;

(iii) The tax period(s) to which the summons relates;

(iv) Six months have passed since service of the summons and the summoned party's response to the summons has not been finally resolved;

(v) The periods of limitations under section 6501 (relating to assessment and collection) and section 6531 (relating to criminal prosecution), have been suspended; and

(vi) The date on which suspension of the periods of limitations under sections 6501 and 6531 began.

(3) *Time and manner of notification.* The notification must be made in writing and may be delivered in person, by mail sent to the address last known by the summoned party, or by use of any electronic means of transmission. Notification should be made as soon as possible after the suspension of the periods of limitations begins. Failure by a summoned party to give notice of the suspension of periods of limitations as required by section 7609(i)(4) does not prevent the suspension of the periods of limitations under section 7609(e)(2).

(e) *Effective/applicability date.* This section is applicable on April 30, 2008.

[T.D. 9395, 73 FR 23345, Apr. 30, 2008]